No. 80-657

In the Supreme Court of the United States

OCTOBER TERM, 1980

JAY McCOWN; L.R.C. CORPORATION; CORPORATION COMMISSION OF STATE OF OKLAHOMA; and CLEARY PETROLEUM CORPORATION,
Petitioners,

VERSUS

DON CRAVENS, Receiver for Buffalo Valley Gas Authority, a public trust; and COMMERCIAL AND INDUSTRIAL BANK OF MEMPHIS,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Oklahoma

RESPONSE BRIEF OF THE ATTORNEY GENERAL OF OKLAHOMA IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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January, 1981

QUESTION PRESENTED

Does Oklahoma Statute Title 52 O.S. 1971, § 87.1(a), authorizing the Oklahoma Corporation Commission to establish initial drilling and spacing units, violate the Fourteenth Amendment to the United States Constitution in a case where notice of the hearing is rendered only by publication, as provided in the statute, and where a producing leasehold is included in the larger proposed initial drilling and spacing unit?

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DON CRAVENS, Receiver for Buffalo Valley Gas Authority, a public trust; and COMMERCIAL AND INDUSTRIAL BANK OF MEMPHIS,
Respondents.

RESPONSE BRIEF OF THE ATTORNEY GENERAL OF OKLAHOMA IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

The Attorney General of Oklahoma, Jan Eric Cartwright, respectfully prays this Court to affirm the decision rendered by the Oklahoma Supreme Court in *Cravens* v. *Corporation Commission*, Okl., 613 P.2d 442 (1980); rehearing denied July 21, 1980.

OPINION BELOW

The opinion of the Oklahoma Supreme Court, reported as *Cravens* v. *Corporation Commission*, Okl., 613 P.2d 442 (1980), appears in Appendix "A" herein.

STATEMENT OF THE CASE

On October 8, 1976, Petitioner McCown filed an Application with the Corporation Commission in Cause No. CD-46121 seeking to establish a single drilling and spacing unit for the Big Fork (Reneau Chert), an alleged common source of supply underlying the Northwest Quarter (NW¼) of Section 32, Township 3 North, Range 20 East, Latimer County, Oklahoma. The Application covered an 80-acre leasehold estate of Buffalo Valley and reference was made to a well thereon. A plat was attached to the Application showing the well to be offset by a well in Section 31 identified as the No. 1 Allen Well which was also shown to be a producer.

Although McCown was aware of the existence of Respondent Buffalo Valley and the existence of the Receiver Cravens and the receivership in Pushmataha County, Oklahoma, and knew of the Bank and its position as bond trustee, no notice of the McCown Application was given except constructive notice by publication which was run in the counties of Latimer and Oklahoma, pusuant to 52 O.S. 1971, § 87.1(a).

Respondents, having no actual notice of the McCown Application, did not appear and when the Application was heard it went by default and Order No. 126044 was entered by the Corporation Commission establishing a single drilling and spacing unit for the production of gas from the Big Fork (Reneau Chert) common source of supply and designating Buffalo Valley's well as the unit well.

On July 8, 1977, Respondents filed their Application with the Commission seeking to vacate Order No. 126044.

Actual notice of the filing of the Application was given to all interested parties. Hearing was held before a trial examiner for the Corporation Commission on December 9, 1977, and concluded on February 23, 1978.

After hearing, the trial examiner filed his report recommending to the Commission that Order No. 126044 be vacated. Exceptions were filed to the report of the trial examiner by Petitioner McCown, and the Commission, on June 12, 1978, issued its Order denying Respondents' Application to vacate Order No. 126044. The effect of this was to continue the existence of the 160-acre drilling and spacing unit created by Order No. 126044 covering the 80-acre leasehold estate of Buffalo Valley and its well.

The Respondents appealed the decision of the Corporation Commission to the Oklahoma Supreme Court stating that they had received no actual notice of the hearing of the Petitioners' application for establishment of a drilling and spacing unit and that by virtue of the failure of notice, the due process protections guaranteed under the Fourteenth Amendment of the United States Constitution had been denied them. They further asserted that had they received notice they would have appeared at the hearing to dispute the necessity of the creation of such a unit encompassing their leasehold. Respondents do acknowledge, however, that notice in accordance with the statutes in Oklahoma was given by Petitioners.

The Oklahoma Supreme Court held on appeal, that when an applicant seeks to establish a drilling and spacing unit which includes a producing leasehold and the applicant knows of the identity of parties owning an interest therein, or can with due diligence ascertain same, such ap-

plicant must not only give the notice required by statute but must give notice by means reasonably calculated to inform all affected parties, thus, reversing the order of the Oklahoma Corporation Commission and, in effect, vacating the 160-acre drilling and spacing unit.

This brief is filed in response to a letter of December 8, 1980, from Michael Rodak, Jr., directing this office to file a response in this case.

ARGUMENT

I.

TITLE 52 O.S. 1971, § 87.1(a) VIOLATES THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION IN A CASE WHERE A KNOWN AND PRODUCING LEASEHOLD IS NOT PROVIDED ACTUAL NOTICE OF A SPACING HEARING.

The leading United States Supreme Court case in this area is *Mullane* v. *Central Hanover Bank & Trust Company*, 339 U.S. 306 (1950). In the case at bar, as in *Mullane*, service was obtained by publication. In this case, constructive notice by publication is all that was given despite Petitioners' admitted knowledge of the names and addresses of the Respondents (Appendix A-2). In *Mullane*, at page 313, this Court, when talking about the meaning of the words in the Due Process Clause of the Fourteenth Amendment, said:

> ". . . there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case."

Recognizing that this Court has never set down any precise rules as to when constructive notice may be used, it is understood that there are instances when it, by necessity, is appropriate. However, in *Mullane,* at page 314, this Court said:

> "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

In this case, even more profoundly than in *Mullane,* the Petitioners were seeking a determination that would not only substantially affect the property rights of the Respondents in a producing gas well, by combining the producing lease of the Respondents with the non-producing lease of Petitioners, but would also decrease the revenue received by the Respondents by fifty percent (50%), which would of course, be received by Petitioners. Thus it appears that this case has a greater impact on the property rights of the Respondents than *Mullane* had on the trust beneficiaries because, even though the trusts were subject to dimunition and losing their individual identity, there was no certainty of adverse monetary loss to the beneficiaries as there is in the case at bar. Here, the Respondents' interests are reduced by fifty percent (50%).

In *Mullane,* supra, at page 318, this Court said:

> "As to known present beneficiaries of known place of residence, however, notice by publication stands on a different footing. Exceptions in the name of necessity do not sweep away the rule that within the limits

> of practicability notice must be such as is reasonably calculated to reach interested parties. Where the names and post-office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mails to apprise them of its pendency."

It is the position of the Attorney General of the State of Oklahoma that this is what the Oklahoma Supreme Court held in the case at bar; requiring the Petitioners to comply with the standards of *Mullane* and those previously set out by the Oklahoma Supreme Court which will be elaborated on later in this brief. The constitutional obstacles presented Petitioners by *Mullane* are insurmountable and are even more profound in this case.

The Supreme Court of the United States has long recognized the pitfalls of something less than actual notice. In *McDonald* v. *Mabee,* 243 U.S. 90 (1917), Mr. Justice Holmes said:

> "And in states bound together by a Constitution and subject to the 14th Amendment, great caution should be used not to let fiction deny the fair play that can be secured only by a pretty close adhesion to fact.
>
> • • • •
>
> "To dispense with personal service the substitute that is most likely to reach the defendant is the least that ought to be required if substantial justice is to be done."

It is submitted that the Oklahoma Supreme Court recognized this concept of "substantial justice" in reversing the Oklahoma Corporation Commission. In the case

at bar, notice by publication was given in the county where the Respondents' producing gas well was located, and in Oklahoma City; however, Petitioners admittedly knew that there was a receiver, Don Cravens, involved in the operation of the gas well and they also knew his address, which was not in either of the counties where publication was made (Appendix A-2). Further, no attempt was made to give actual notice to Respondent Bank of Memphis, which is out of state and thus, the insufficiency of notice by publication becomes even more profound.

In *Southern Railway Company* v. *Virginia ex rel. Shirley*, 290 U.S. 190 (1933), at page 196, this Court said:

> "The claim that the questioned statute was enacted under the police power of the State and, therefore, is not subject to the standards applicable to legislation under other powers, conflicts with the firmly established rule that *every State power is limited by the inhibitions of the Fourteenth Amendment.*" (Emphasis added.)

This negates Petitioners' argument that since the Oklahoma Corporation Commission is exercising police powers, the standards of *Mullane* do not apply. The falacious nature of this argument is further pointed out by the Oklahoma Supreme Court in the decision below, wherein it is stated that since *Mullane* and the standards promulgated thereby, the Oklahoma Supreme Court, in interpreting Oklahoma law, has set minimal standards that must be met even in cases of this nature, wherein the Corporation Commission is exercising police powers. Thus, Petitioners' arguments are inconsistent with previous Oklahoma Supreme Court decisions directly in point.

In *Milliken* v. *Meyer,* 311 U.S. 457 (1940), while analyzing the adequacy of constructive notice, it was found that adequacy was dependent upon whether or not the service substituted for actual notice was reasonably calculated to give actual notice, and thus, an opportunity to be heard. It is submitted that if any calculations were made in the instant case they must have been completely to the contrary, for the Petitioners herein knew the names and addresses of both the Respondents, receiver and out-of-state bank, yet no attempt was made to give them service personally. Furthermore, the publication that was given was not even published in either of the Respondents' places of residence.

Subsequent to *Mullane,* the Supreme Court has decided numerous cases that further expound upon the concepts laid down in *Mullane.* In *City of New York* v. *New York, New Haven and Hartford Railroad Company,* 344 U.S. 293 (1953), at page 296, this Court said:

> "Notice by publication is a poor and sometimes a hopeless substitute for actual service of notice. Its justification is difficult at best."

In *Walker* v. *City of Hutchinson, Kansas,* 352 U.S. 112 (1956), at page 116, this Court stated:

> "Measured by the principles stated in the Mullane case, we think that the notice by publication here falls short of the requirements of due process. It is common knowledge that mere newspaper publication rarely informs a landowner of proceedings against his property. In Mullane we pointed out many of the infirmities of such notice and emphasized the advantage of some kind of personal notice to interested parties. In

> the present case there seem to be no compelling or even persuasive reasons why such direct notice cannot be given. Appellant's name was known to the city and was on the official records. Even a letter would have apprised him that his property was about to be taken and that he must appear if he wanted to be heard as to its value."

The reasoning in *Walker* parallels that of the Oklahoma Supreme Court in this case and dispels the arguments of Petitioners. In *Wisconsin Electric Power Company* v. *City of Milwaukee,* 352 U.S. 948 (1957), this Court vacated and remanded a judgment of the Supreme Court of Wisconsin, that held notice by publication was sufficient and ordered that judgment be reconsidered in the light of *Walker,* supra.

In *Schroeder* v. *City of New York,* 371 U.S. 208 (1962), in a situation with facts very similar to the case at bar, on pages 212 and 213, this Court said:

> "The general rule that emerges from the Mullane case is that notice by publication is not enough with respect to a person whose name and address are known or very easily ascertainable and whose legally protected interests are directly affected by the proceedings in question. . . ."

Thus, even though this Court has not committed itself to a formula for deciding when constructive notice may be used, there are certain minimal standards which must be met to satisfy the requirements of "substantial justice". In this case, as in *Schroeder,* there was an obligation, constitutionally imposed, to at least give a good faith attempt to notify Respondents; and here, as in *Schroeder,* it was an obligation that the mere mailing of a letter, to persons

whose names and addresses were known by Petitioners, would have discharged.

II.

THE DECISION BELOW WAS CONSISTENT WITH THE LONG-STANDING LAW IN OKLAHOMA REGARDING NOTICE BY PUBLICATION.

The Supreme Court of Oklahoma has consistently required notice by more than mere publication in situations where the person sought to be notified is within the State of Oklahoma. As early as 1935, in the case of *Ross et al.* v. *Thompson*, Okl., 50 P.2d 385 (1935), the Supreme Court of Oklahoma held that publication service is void as to:

> "[p]arties whose names and claimed interest may be ascertained from the records of the county in which the land is situate. . . . [and that] [b]efore a plaintiff may resort to service by publication on unknown owners of realty, or sue defendants by name, if living or if dead, their heirs, etc., due diligence must be exercised to ascertain whether defendants so sued are living or dead, and if dead, the names and whereabouts of their heirs." (Court Syllabus 2, 3.)

Thus, it may be said that in Oklahoma, fifteen years before the *Mullane* doctrine was announced by this Court, notice by publication alone was inadequate, absent a *diligent* search for the whereabouts of the defendant.

In the case at bar, there was "actual knowledge of the Authority's lease, its operation of the producing well and the existence of the receivership", yet notice "was by publication only." (*Cravens*, 613 P.2d at 443.)

The *Mullane* doctrine, as well as the principles of *Ross*, supra, were carried forward by the Oklahoma Supreme Court in *Bomford* v. *Socony Mobil Oil Co.*, Okl., 440 P.2d 713 (1968). The facts of *Bomford* centered around a quiet-title action concerning a mineral estate. A tax sale and tax deed were obtained contrary to the defendant's interests. Notice was effected solely by publication. After discussing *Mullane*, the Oklahoma Supreme Court stated:

> "The general rule that emerges from Mullane and subsequent cases is simple: A state cannot invest itself with, and exercise through its courts, judicial jurisdiction over a person in a proceeding which may directly and adversely affect his legally protected interests, unless a method of notification is employed which is reasonably calculated to give him knowledge at a meaningful time and in a meaningful manner of the attempted exercise of jurisdiction and an opportunity to be heard.
>
> * * * *
>
> "But notice by publication is clearly insufficient with respect to one whose name and address are known or readily ascertainable from sources at hand. In other words, the requirements of due process are not satisfied unless due dilegence has been exercised to find the whereabouts of the defendant." (*Bomford*, 440 P.2d at 718.)

The Court explained what constituted "due diligence".

> "[If a search of the] primary sources at hand, such as local tax rolls, deed records, judicial records and other official records, as well as available secondary sources, such as a telephone directory, a city directory or the like, have been exhausted in a meaningful pursuit of information, the approval of publication process as a method of notification is to be regarded with the

> same effect as a decision upon any other fact issue submitted for judicial determination." (*Bomford*, 440 P.2d at 718, 719.)

The court in *Bomford* required more than a mere assertion that "due diligence" had been exercised.

> ". . . Due process is violated by the mere act of exercising judicial power upon process not reasonably calculated to apprise the defendant of the pendency of an action. Riverside & Dan River Cotton Mills v. Menefee, 237 U.S. 189, 35 S.Ct. 579, 59 L.Ed. 910. And the violation is not cured by granting the aggrieved party a hearing on his motion to set aside the tainted judgment." (*Bomford*, 440 P.2d at 719.)

In fact, the *Bomford* court admonished the trial courts in Oklahoma as follows:

> "The trial judge *shall not* approve publication process effected in any case unless he is satisfied from the evidence presented that plaintiff has met the requisite standard of due diligence." (Emphasis by the court; *Bomford*, 440 P.2d at 720.)

So it appears that in Oklahoma, where a potential defendant resides within the State, a "meaningful pursuit of information" must be made prior to any hearing that may deprive one of his legally protected interests.

In the case at bar, there is no evidence that such an inquiry was ever attempted. Only notice by publication pursuant to 52 O.S. 1971, § 87.1(a) was given. This was conceded by Petitioner McCown. (Petitioner's brief, at 3.)

A more recent Oklahoma decision with underlying facts similar to those before this Court is *Olansen* v. *Texaco*,

Inc., Okl., 587 P.2d 976 (1978). In that case, Texaco, Inc., paid royalties based on their own files of ownership of the minerals instead of the county records. A unitization proceeding was set before the Oklahoma Corporation Commission and notice was by publication pursuant to statute and Commission rule. Texaco, Inc., relied again on its own ownership files for the mailing and publication of notice.

Texaco defended its actions stating that it complied with the rules and statutes and that neither required it to serve notice on the leasor-royalty owners. However, the Oklahoma Supreme Court stated that:

> "By implication at least, the conservation statutes for compulsory unitization require some kind of actual notice (i.e., notice consistent with the due process clause) to the owner-lessor because a plan of unitization not only amends and modifies the lessor-lessee rights and duties under the oil and gas lease but may not become effective until approved or ratified by the owners of record of not less than 63% of the normal one-eighth (1/8) royalty interest." (*Olansen*, 587 P.2d at 982.)

Then the court embarked upon a discussion of *Mullane* and its requirements as to notice.

> "Under the due process clause of the United States Constitution the Olansens, whose interest and whereabouts could have been easily ascertained, were entitled to more notice than notice by publication of the unitization proceedings. In Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865, the U. S. Supreme Court said that an elementary and fundamental requirement of due process in any proceeding which is to be accorded finality

> is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The Court also said that the right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest. The Court refused to sanction notice by publication to those whose identity and addresses were ascertainable from sources readily at hand." (*Olansen,* 587 P.2d at 982.)

The Court, therefore, concluded that notice by publication, as required by statute, was insufficient to give the Olansens notice that their mineral interests had been included in a unitization proceeding. (*Olansen,* 587 P.2d at 983.)

Again, the highest Court of Oklahoma had required notice beyond the statutory requirements before mineral interests could be interfered with by the Corporation Commission.

One final Oklahoma case concerning the canceling of an oil and gas lease by publication notice, is *Johnson* v. *McDaniel,* Okl., 569 P.2d 977 (1977). Plaintiff sought to cancel a lease for non-production. Notice by publication was issued, and a summons mailed to defendant McDaniel at an Oregon address. The summons was returned unclaimed. McDaniel had an Oklahoma address and was in an Oklahoma hospital at the time "notice" was issued.

None of the sources listed in the *Bomford* case, supra, were utilized by the plaintiff Johnson. In fact, a member of the law firm representing Johnson acknowledged that

he could have located the defendant if he had checked his files. (*Johnson,* 569 P.2d at 981.)

The Oklahoma Supreme Court could find no evidence that McDaniel had any notice at all prior to the time default judgment was taken. The court stated the notice requirements to mean:

> "Where names and addresses of adverse parties are known or are easily ascertainable, notice of pending proceedings by publication service alone, is not sufficient to satisfy the requirements of due process under federal or Oklahoma constitutions. All sources must be exhausted in a meaningful pursuit of information as to a defendant's whereabouts.
>
> "The summons was returned unclaimed and no further effort was made to notify McDaniel or to obtain his address or phone from the law firm's files. The requirements of due process were not met." (*Johnson,* 569 P.2d at 981.)

The court reversed the lower court stating that a failure to comply with due process negates jurisdiction.

Thus, it has been established that the decisional law of Oklahoma requires more than statutory publication notice where, with due diligence, the defendant's address or location could be ascertained. The decision of the Oklahoma Supreme Court in the case at bar followed this forty-five year old line of authority. In the decision below, Justice Doolin, speaking for a unanimous court, reiterated:

> "When the names and addresses of the parties are known, or are easily ascertainable by the exercise of diligence, notice of pending proceedings by publication service alone, is not sufficient to satisfy the require-

ments of due process under federal or Oklahoma constitutions.

* * * *

"Regardless of the statutory provisions for publication alone applicants were required to use due diligence in notifying receiver of their application under the principles of *Bomford* and *Mullane.*" (Emphasis by court; *Cravens*, 613 P.2d at 444.)

The consistent position taken by the Oklahoma Supreme Court over the years is a sound one that seeks to insure fairness and justice. Furthermore, the State does not violate the Due Process Clause by providing alternative or additional procedures beyond what the United States Constitution requires. *Smith* v. *Organization of Foster Families*, 431 U.S. 816 (1977).

It is submitted that the independent body of Oklahoma law furnishes support for the results reached in the decision below. This body of State authority, coupled with *Mullane* and the subsequent pronouncements of this Court, provide ample guidance and precedent for affirming the decision below.

CONCLUSION

WHEREFORE, the petition for writ of certiorari should be denied and the decision rendered in *Cravens* v. *Corporation Commission*, Okl., 613 P.2d 444 (April 29, 1980), should be left intact by this Honorable Court as being consistent with the United States Constitution and the interpretations thereof by this Court.

Respectfully submitted,

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January, 1981

CERTIFICATE OF SERVICE

I hereby certify that three (3) copies of this Response were mailed to the persons listed below on the _____ day of January, 1981, by placing same in the U. S. Mail with postage fully prepaid.

All parties required to be served have been served.

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APPENDIX A

[Filed April 29, 1980]

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

DON CRAVENS, RECEIVER FOR BUFFALO VALLEY GAS AUTHORITY, a public trust, and COMMERCIAL AND INDUSTRIAL BANK OF MEMPHIS, Appellants,	)	
v.	)	No. 52,488
CORPORATION COMMISSION OF THE STATE OF OKLAHOMA; JAY McCOWN, L.R.C. CORP., and CLEARY PETROLEUM CORPORATION, Appellees.	)	

APPEAL FROM THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

Receiver for Buffalo Gas Authority appeals from a refusal by the Corporation Commission to vacate a drilling and spacing order on grounds receiver had no actual notice of the hearing wherein order was issued.

REVERSED

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[APPENDIX]

DOOLIN, J.:

Don Cravens, duly appointed receiver of the Buffalo Valley Gas Authority (Authority) made application to the Oklahoma Corporation Commission (Commission) to vacate an order establishing a 160 acre drilling and spacing unit for the Big Fork, Authority, a public trust established for the purpose of furnishing natural gas to certain towns had been in receivership for a year when Commission created the unit. At that time Authority, through the receiver, was operating the Reneau Well #1, a producing gas well located on an 80 acre lease included in the unit.

Jay McCown et al (applicants) obtained the drilling and spacing order for the Big Fork (Reneau Chert) alleged common source of supply underlying a quarter section in Latimer County Oklahoma. The order designated Authority's well as the unit well. Despite actual knowledge of Authority's lease, its operation of the producing well and the existence of the receivership in Pushmataha County, applicants did not notify receiver of the proceedings before the Commission wherein they sought to include Authority's 80 acre lease in a single 160 acre unit. Notice was by publication only. Applicants did not seek to space any other acreage in the area and the order was entered by default.

Receiver was unaware of the application or proceeding before Commission until after the order was issued. It was on this principle Receiver[1] sought to vacate the order, claiming had he received notice he would have appeared and resisted the application by presenting evidence there was no basis for creating the 160 acre unit, rather than an 80 acre unit.

After hearing the trial authority recommended Receiver's application be granted and the original order vacated. Applicants filed exceptions. Commission heard the

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[1] Appellant Commercial and Industrial Bank of Memphis is the bond indenture trustee for Authority.

exceptions and considered the trial examiner's report but declined to accept it or to vacate the order enlarging the unit. Receiver appeals.

Oklahoma statutes and the rules of the Corporation Commission provide the minimal type of notice required for each type hearing, depending on the relief sought.

52 O.S. 1979 Supp. § 87.1 sets forth the publication notice required when a drilling and spacing order is sought. This same requirement is contained in Commission rule 12(b) which provides:

> "Application Relating to Units: Notice of an application to establish, change or rearrange drilling and spacing units, and an application to create a unit pursuant to 52 O.S. 1961 Sec. 287.1 et seq. shall be published one time at least fifteen days prior to the hearing in a newspaper published in Oklahoma City, Oklahoma and in a newspaper published in each county in which lands embraced in the application are located. (52 O.S. 1961 Sec. 87.1)."

It is stipulated the notice requirements of the statutes and this rule were met. Notice was published in Oklahoma County and Latimer County where the well was located. However, there was no publication in Pushmataha County where the receivership was pending. Under these facts and circumstances we do not believe the publication notice provided by the statute and rules was adequate to meet constitutional scrutiny.

It is generally held that administrative agencies may not deprive, nor may a statute empower them to deprive, a person of his constitutionally protected rights without notice and hearing.[2] A statute or administrative rule may

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[2] Southern Ry. Co. v. Commonwealth of Virginia, 290 U.S. 190, 54 S.Ct. 148, 78 L.Ed. 260 (1933); Tulsa Classroom Teachers Association, Inc. v. State Board of Equalization, 601 P.2d 99, 102 (Okla. 1979).

not take away or infringe on rights guaranteed by the constitution. We are unaware of any other proceeding so profoundly affecting personal or property rights where notice commences with publication instead of after other avenues have been exhausted, such as service of summons or notice.

Since the case of *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865, 873 (1950) promulgated standards which must be met before notice or service by publication is effective, this court had consistently required due diligence in giving notice of a proceeding to persons whose rights could be adversely affected. In *Bomford* v. *Socony Mobil Oil Co.*, 440 P.2d 713 (Okla. 1968), we stated due process requires this notice to be given by means reasonably calculated to inform all affected parties.

If the proceeds from the sale of gas are ordered to be shared because of the creation of an enlarged unit comprising an additional 80 acres leased by another entity, there is no doubt Authority's legal rights will be directly and adversely affected thereby. When the names and addresses of the parties are known, or are easily ascertainable by the exercise of diligence, notice of pending proceedings by publication service alone, is not sufficient to satisfy the requirements of due process under federal or Oklahoma constitutions.[3]

When the original applicants sought the 160 acre drilling and spacing unit there were at least two wells in the area, the producing Reneau #1 operated by Authority, and an offset, found by Commission to be a dry hole. Applicants admit to knowledge of the producing well operated by Authority on the 80 acre lease included in the new unit and of the existence of the receivership in Pushmataha County and the identity of the receiver. No notice was

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[3] Also see Johnson v. McDaniel, 569 P.2d 977 (Okla. 1977); Tammie v. Rodriquez, 570 P.2d 332 (Okla. 1977).

given to Authority or Receiver under appointment in Pushmataha District Court. The order was entered without opposition as no other leasehold was involved.

Regardless of the statutory provisions for publication alone applicants were required to use due diligence in notifying receiver of their application under the principles of *Bomford* and *Mullane*.

Accordingly we hold when an applicant seeks to establish a drilling and spacing unit which includes a producing leasehold and the applicant knows of the identity of parties owning an interest therein or can with due diligence ascertain same, such applicant must not only give the notice required by statute and rule but must comply with the standards of *Bomford* and *Mullane*.

REVERSED.

ALL THE JUSTICES CONCUR.